PUBLIC PROSECUTOR v. KOH YOKE KOON

[S.C. (Abdul Hamid C.J. (Malaya), Hashim Yeop A. Sani & Syed Agil Barakbah S.C.JJ.) 18 April & 11 May 1988]

[Kuala Lumpur — Supreme Court Criminal Appeal No. 50 of 1987]

Criminal Law — Detention under Emergency (Public Order and Prevention of Crime) Ordinance 1969 — Order of detention authorizing detention at Pulau Jerejak Rehabilitation Centre — Person detained at Muar police station before removal to Pulau Jerejak — Whether detention legal — Habeas corpus issued — Emergency (Public Order and Prevention of Crime) Ordinance 1969, ss. 3, 4 & 12.

Constitutional Law — Habeas corpus — Detention under Emergency (Public Order and Prevention of Crime) Ordinance 1969 — Person detained at place other than that stated in detention order — Person cannot be said to be in lawful custody or detention — Emergency (Public Order and Prevention of Crime) Ordinance 1969, ss. 3, 4 & 12 — Federal Constitution, art. 5(1).

In this case, the respondent was first arrested by the police on 1 October 1986 for alleged involvement in secret society activities. He was remanded in custody on an order by a magistrate for 14 days and released on 14 October 1986. On the same date, he was re-arrested and detained under section 3 of the Emergency (Public Order and Prevention of Crime) Ordinance 1969. He was detained in police custody for a period of 60 days as allowed by section 3 of the Ordinance. The period of 60 days expired on 13 December 1986. He was, however, detained in the Muar police station until sometime in the morning of 16 December 1986 when he was removed to the Pulau Jerejak Rehabilitation Centre pursuant to a detention order made by the Deputy Minister of Home Affairs pursuant to section 4(1) of the Ordinance. The order was to take effect from 12 December 1986 and a copy of the order was served on the respondent on 14 December 1986. The order clearly stated that the respondent was to be detained at the Pulau Jerejak Rehabilitation Centre. On an application for *habeas corpus*, the learned trial judge held that the respondent's detention at Muar police station from 14 December 1986 until 16 December 1986 was unauthorized and illegal. He therefore made an order granting *habeas corpus* to the respondent (see [1988] 1 M.L.J. 45). The appellant appealed.

Held, dismissing the appeal: (1) in the present case the language of the detention order is clear and unambiguous. According to the detention order, the respondent was to be detained at the Pulau Jerejak Rehabilitation Centre and nowhere else;

(2) the learned trial judge was correct in holding that for the period 14 December 1986 until the morning of 16 December 1986 the respondent cannot be said to be in lawful custody or detention. In the circumstances, the continued detention of the respondent should not be allowed.

Cases referred to:

(1) *Karam Singh* v. *Menteri Hal Ehwal Dalam Negeri* [1969] 2 M.L.J. 129 (folld).

(2) *Andrew s/o Thamboosamy* v. *Superintendent of Pudu Prison, Kuala Lumpur* [1976] 2 M.L.J. 156 (refd).

SUPREME COURT.

Mohd. Noor bin Hj. Ahmad (Deputy Public Prosecutor) for the appellant.

Christopher Fernando for the respondent.

Cur. Adv. Vult.

Hashim Yeop A. Sani S.C.J. (delivering the grounds of decision of the court): The issue in this appeal is confined to the interpretation of the relevant provisions of sections 3, 4 and 12 of the Emergency (Public Order and Prevention of Crime) Ordinance 1969 (the Ordinance).

The respondent was first arrested by the police on 1 October 1986 for alleged involvement in secret society activities. He was then remanded in custody under section 117 of the Criminal Procedure Code for 14 days pursuant to an order made by a magistrate. He was released on 14 October 1986 but on the same day he was re-arrested and detained under section 3 of the Ordinance and a copy of the reasons for the arrest was served on him. The specific reasons for the arrest were set out as:

"(a) Bahawa beliau adalah seorang ahli dalam kumpulan haram/kongsi gelap;

(b) bahawa beliau terlibat dalam kegiatan-kegiatan yang mengancam ketenteraman awam;

(c) bahawa beliau melakukan kesalahan-kesalahan jenayah yang bercorak kekerasan;

(d) bahawa saya mempercayai ada alasan-alasan untuk menahan beliau di bawah Sek. 4(1) Ordinan (Ketenteraman Awam dan Mencegah Jenayah) Dharurat 5/69."

A person arrested and detained, pending enquiries under section 3 of the Ordinance, may be detained in police custody for a period not exceeding 60 days. In respect of the respondent, the period of 60 days expired on 13 December 1986. He was, however, detained in the Muar police station until some time in the morning of 16 December 1986 when he was removed to Pulau Jerejak Rehabilitation Centre pursuant to a detention order made by the Deputy Minister of Home Affairs pursuant to section 4(1) of the Ordinance.

The order was to take effect from 12 December 1986 and a copy of the order was served on the respondent on 14 December 1986.

The relevant part of the detention order reads as follows:

"Oleh yang demikian, pada menjalankan kuasa yang diberi kepada saya di bawah Seksyen 4(1) Ordinan Dharurat (Ketenteraman Awam dan Mencegah Jenayah), 1969, maka saya mengarahkan dengan Perintah ini supaya orang yang namanya tersebut di atas ditahan selama dua tahun mulai dari 12 haribulan Disember 1986 di Pusat Pemulihan Akhlak, Pulau Jerejak atau di mana-mana tempat lain sebagaimana yang diarah oleh saya dari semasa ke semasa."

The detention order stated that the Minister was satisfied that with the view to preventing the respondent from acting in any manner prejudicial to public order it was necessary that the respondent should be detained. An attempt in the court below to question whether there was reasonable cause to make the detention order and the protestations of innocence of the respondent were correctly rejected by the trial judge applying *Karam Singh* v. *Menteri Hal Ehwal Dalam Negeri.*[1]

At the conclusion of the hearing, however, the learned judge made a formal order granting *habeas corpus* to the respondent based on his finding that the respondent's detention at the Muar Police station from 14 December 1986 until 16 December 1986 was unauthorized and illegal. The issue now is whether this conclusion of the trial judge is justified by the proper construction of sections 3, 4 and 12 of the Ordinance.

Any police officer may, under section 3 of the Ordinance, without a warrant arrest and detain pending enquiries any person in respect of whom the police officer has reason to believe that there are grounds which would justify a person's detention under section 4 of the Ordinance. A person arrested and detained under section 3 may be detained in police custody for a period not exceeding 60 days before a detention order is made against him under section 4(1) of the Ordinance. Section 4 of the Ordinance provides that if the Minister is satisfied that with the view to preventing any person from acting in any manner prejudicial to public order it is necessary that the person should be detained the Minister shall make a detention order directing that a person be detained for a period not exceeding two years.

Section 4(2) of the Ordinance expressly provides that every person detained pursuant to a detention order shall be detained *in such place as the Minister may direct* and in accordance with the instructions issued by him.

Section 12 of the Ordinance provides further that the Minister may by order direct the removal of a person detained pursuant to a detention order from any place of detention to another place of detention to be specified in such order. Section 12(2) expressly provides that any person *in the course of removal under the provisions of the order for removal made under section 12(1) shall be deemed to be in lawful custody* (note emphasis). There is no similar provision in section 4 of the Ordinance.

Detention not in accordance with law is inconsistent with the fundamental right guaranteed under article 5(1) of the Constitution. Where a law deals with detention, there are abundant authorities to show that the provisions of such a law must be construed strictly and in the case of doubt the court should lean in favour of the subject. See also *Andrew s/o Thamboosamy* v. *Superintendent of Pudu Prison, Kuala Lumpur.*[2]

In the present case, the language of the detention order is clear and unambiguous. According to the detention order, the respondent was to be detained for two years with effect from 12 December 1986 *at the Pusat Pemulihan Akhlak, Pulau Jerejak* and nowhere else. The provisions of the Ordinance referred to earlier are also clear and unequivocal that a detention order under section 4 authorizes the detention of a person only at such place as the Minister may direct. Section 12 of the Ordinance provides for the order of removal of a person detained from one place of detention to another place of detention and it is only under an order under section 12(1) of the Ordinance that a person detained in the course of removal shall be deemed to be in lawful custody.

We therefore agree with the learned judge that for the period 14 December 1986 until the morning of 16 December 1986 the respondent cannot be said to be in lawful custody or detention. We also agree with the learned judge that in the circumstances of this case the continued detention of the respondent should not be allowed.

Appeal dismissed.

Appeal dismissed.

Solicitors: *Gunaretnam & Co.*